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In the Supreme Court of the United States

OCTOBER TERM, 1952

No. 6, Original

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF CALIFORNIA

EXCEPTIONS OF THE UNITED STATES TO THE REPORT OF THE SPECIAL MASTER FILED NOVEMBER 10, 1952

The United States excepts in the following particulars to the Report of the Special Master dated October 14, 1952, and ordered filed herein on November 10, 1952:

I

With respect to the ultimate recommendations of the Special Master appearing at pages 2 to 5 of his report:

1. The United States excepts to the recommendation of the Special Master that "In front of harbors the outer limit of inland waters is to embrace an anchorage reasonably related to the physical surroundings and the service requirements of the port,

and, absent contrary evidence, may be assumed to be the line of the outermost permanent harbor works" (Report, p. 4), insofar as it recommends that any area not protected, or partially enclosed, by natural formations be held inland waters as a part of a port or harbor.

2. The United States excepts to the recommendation of the Special Master that the ordinary low-water mark is to be determined "(as it exists at the time of survey") (Report, p. 4), insofar as it makes no exception for artificial changes made after California entered the Union.

3. The United States excepts to the failure of the Special Master to recommend that man-made changes in the shoreline should not affect rights as between the United States and California either in the subsoil beneath changes in the shoreline or in areas enclosed, partially enclosed, or protected by such changes.

II

With respect to preliminary findings and rulings of the Special Master appearing at pages 5 to 48:

4. The United States excepts to the ruling of the Special Master that he was not bound by the formal statement of the Department of State with respect to the past policy of the United States as to what waters have been claimed as inland waters. (Report, p. 22.)

5. The United States excepts to the ruling of the Special Master that the date of October 28 [27], 1947, when the decree in this case was entered, is

the critical date for the determination of the policy of the United States as it applies in this case, rather than the date, yet to be fixed by supplemental decree, when a determination as to the location of the precise limits of inland waters will be made. (Report, p. 22.)

6. The United States excepts to the ruling of the Special Master admitting in evidence the testimony of Dr. Hudson in derogation of statements of the Department of State respecting what waters it has claimed and now claims as inland waters. (Report, p. 22.)

7. The United States excepts to the failure of the Special Master to find that no exercise of authority with respect to offshore waters by the State of California can *per se* have any effect on the status of such waters as between the United States and foreign countries or between the United States and California. (Report, p. 31.)

8. The United States excepts to the failure of the Special Master to find that before, as well as after, 1933, the California legislature, by its legislation describing county boundaries, recognized that the seaward boundary of the State ran three miles from the mainland shore in the area now claimed by the State as the "unit area" of inland water. (Report, p. 39.)

9. The United States excepts to the conclusion of the Special Master that the decree entered by this Court on October 27, 1947 (332 U. S. 804, 805), decreeing that the United States has paramount rights in an area bounded in part by the "ordinary

low-water mark," was not a judicial determination that the area referred to is bounded, in the parts so described, by a line marking the mean of all low tides. (Report, p. 43.)

10. The United States excepts to the holding of the Special Master that California has acquired title to the subsoil and its contents underlying artificial structures built out from the shore. (Report, pp. 45-46.)

11. The United States excepts to the finding of the Special Master that the construction of artificial harborworks increases the area of inland waters outside of the naturally protected areas of ports and harbors, and to the finding that anchorages used in connection with ports and harbors are *per se* inland water. (Report, pp. 46-48.)

Respectfully submitted,

WALTER J. CUMMINGS, JR.,
Solicitor General.

JANUARY, 1953.

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